

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PATRICIA GAIL LEDDY,

Docket No.: 08 CIV 02377

Plaintiff,

ANSWER

- against -

STARR TRANSIT CO. INC. and
FREDERICK A. GILMER,

Defendants.

Defendants STARR TRANSIT CO. INC. and FREDERICK A. GILMER, by their attorneys, GALLO VITUCCI KLAR PINTER & COGAN, answering the Complaint of the plaintiff, respectfully state and allege upon information and belief as follows:

1. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of the Complaint numbered "1".
2. Deny each and every allegation contained in paragraphs of the Complaint numbered "8", "9", "10", "11", "12", "13", "14", "15" and "16".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. That any injuries and/or damages sustained by the plaintiff, as alleged in the Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of said plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of these answering defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

4. Any damages which may have been sustained by the plaintiff was contributed to in whole or in part by the culpable conduct of third parties not under the control of these defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

5. Pursuant to Federal Rules, if it be determined or established that plaintiff has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under title XVIII of the Social Security ACT), workers' compensation or employee benefit programs (except such collateral source entitled by law to liens against any recovery of the plaintiff), then and in that event answering defendants hereby plead in mitigation of damages the assessment of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two year period immediately proceeding the accrual of this action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits and as otherwise provided in Federal Rules.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

6. A. The accident described in the Complaint did not result in a "serious injury" to the plaintiff so defined in and by Section 5102 (d) of the Insurance Law of the State of New York. By reason of the premises in Section 5104 of the Insurance Law of the State of New

York, plaintiff has no right to institute, maintain or prosecute this action and is barred from doing so.

B. The plaintiff did not sustain serious injury as defined by Section 5102 (d) of the Insurance Law of the State of New York, and her exclusive remedy therefore is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

7. This action is a nullity in that the Summons and Complaint has not been filed with the Clerk of the Court pursuant to CPLR Section 304.

WHEREFORE, defendants STARR TRANSIT CO. INC. and FREDERICK A. GILMER demand judgment dismissing the plaintiff's Complaint, including all claims, together with attorneys' fees, costs and disbursements of this action.

Dated: New York, New York
March 27, 2008

Yours, etc.

GALLO VITUCCI KLAR PINTER & COGAN



By: MATTHEW J. VITUCCI, ESQ (MJV-6446)
Attorneys for Defendants
STARR TRANSIT CO. INC. and
FREDERICK A. GILMER
90 Broad Street, 3rd Floor
New York, New York 10004
(212) 683-7100
Our File No.: LA-2008-10

To:

LEANDROS A. VRIONEDES, ESQ.
Attorneys for Plaintiff
381 Park Avenue South, Suite 701
New York, New York 10016
(212) 889-9362

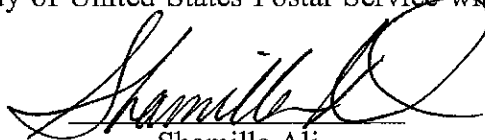
AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

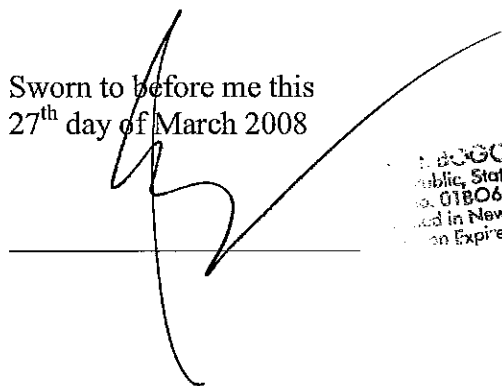
The undersigned being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 years and resides in the County of Richmond. That on the 27th day of March, 2008, she served the within **ANSWER** upon:

LEANDROS A. VRIONEDES, ESQ.
Attorneys for Plaintiff
381 Park Avenue South, Suite 701
New York, New York 10016

via regular mail by depositing a true copy of same securely enclosed in a post paid wrapper in an official depository under the exclusive care and custody of United States Postal Service within the City and State of New York.


Shamilla Ali

Sworn to before me this
27th day of March 2008


JULIE BOGOMOLNY
Notary Public, State of New York
No. 01806093185
Qualified in New York County
Commission Expires 8/4/11

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ANSWER

GALLO VITUCCI KLAR PINTER & COGAN

Attorneys for Defendants

90 Broad Street, 3rd Floor
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